



January 20, 2006

SENATE BILL No. 153

DIGEST OF SB 153 (Updated January 18, 2006 6:36 pm - DI 106)

Citations Affected: IC 12-17; IC 31-14; IC 31-15; IC 31-16; IC 31-18; IC 31-33; IC 33-32; IC 33-37; IC 34-30.

Synopsis: State central collection unit and child support. Establishes the state central collection unit (unit) within the child support bureau to collect and process noncash child support payments. Requires clerks of court (clerks) to collect and process cash child support payments. Deletes references to "other person" and "other governmental agency" in statutes concerning the unit. Requires a party affected by a child support order to notify the unit or a clerk of an address change. Requires a person using income withholding to provide certain information to the unit. Repeals a provision regarding noncash payments of child support to clerks. Provides that the unit is not liable for certain errors in the disbursement and collection of child support payments. Provides the procedure the unit is to follow if the unit improperly disburses a child support payment. Makes certain changes concerning income withholding orders in enforcing dissolution of marriage, legal separation, and child support decrees. Provides that a collection agency that contracts with the child support bureau or a prosecuting attorney may, in addition to the collection of arrearage on a child support order, assess and collect from an obligor all fees, charges, costs, and other expenses as provided under the contract. Provides that an individual ordered to pay child support through income withholding shall also pay the annual child support fee through income withholding. Changes the support and maintenance fee to \$30. Provides that the state central collection unit may collect any unpaid fee through any lawful means. Provides that the child support bureau

(Continued next page)

Effective: Upon passage; July 1, 2006.

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January 9, 2006, read first time and referred to Committee on Judiciary.
January 19, 2006, amended, reported favorably — Do Pass; reassigned to Committee on Appropriations.

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(bureau) may contract with a private entity to undertake Title IV-D duties. Provides that the bureau shall stipulate service levels that a prosecuting attorney, private attorney, private entity or collection agency is expected to meet and that certain funds shall be disbursed if the service levels are met. Provides that the bureau retains 22.2% of incentive payments distributed to a county regarding child support payment collection. Provides that incentive payments shall be distributed in the following manner: (1) 22.2% of the incentive payments are distributed to the county general fund; (2) 33.4% of the incentive payments are distributed to the prosecuting attorney; (3) 22.2% of the incentive payments are distributed to the court clerk; and (4) the bureau shall retain 22.2% of the incentive payments. Makes technical corrections. (The introduced version of this bill was prepared by the select committee on reorganization of child services.)

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January 20, 2006

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

SENATE BILL No. 153

A BILL FOR AN ACT to amend the Indiana Code concerning family law and juvenile law.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 12-17-2-18, AS AMENDED BY P.L.234-2005,
2 SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2006]: Sec. 18. (a) The bureau shall make the agreements
4 necessary for the effective administration of the plan with local
5 governmental officials within Indiana. The bureau shall contract with:
6 (1) a prosecuting attorney;
7 (2) a private attorney **or private entity** if the bureau determines
8 that a reasonable contract cannot be entered into with a
9 prosecuting attorney and the determination is approved by at least
10 two-thirds (2/3) of the Indiana child custody and support advisory
11 committee (established by IC 33-24-11-1); or
12 (3) a collection agency licensed under IC 25-11 to collect
13 arrearages on child support orders under which collections have
14 not been made on arrearages for at least two (2) years;
15 in each judicial circuit to undertake activities required to be performed
16 under Title IV-D of the federal Social Security Act (42 U.S.C. 651),
17 including establishment of paternity, establishment, enforcement, and

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modification of child support orders, activities under the Uniform Reciprocal Enforcement of Support Act (IC 31-2-1, before its repeal) or the Uniform Interstate Family Support Act (IC 31-18, or IC 31-1.5 before its repeal), and if the contract is with a prosecuting attorney, prosecutions of welfare fraud.

(b) The hiring of ~~an~~ **a private attorney or private entity** by an agreement or a contract made under this section is not subject to the approval of the attorney general under IC 4-6-5-3. An agreement or a contract made under this section is not subject to IC 4-13-2-14.3 or IC 5-22.

(c) Subject to section 18.5 of this chapter, a prosecuting attorney with which the bureau contracts under subsection (a):

- (1) may contract with a collection agency licensed under IC 25-11 to provide child support enforcement services; and
- (2) shall contract with a collection agency licensed under IC 25-11 to collect arrearages on child support orders under which collections have not been made on arrearages for at least two (2) years.

(d) A prosecuting attorney or private attorney entering into an agreement or a contract with the bureau under this section enters into an attorney-client relationship with the state to represent the interests of the state in the effective administration of the plan and not the interests of any other person. An attorney-client relationship is not created with any other person by reason of an agreement or contract with the bureau.

(e) At the time that an application for child support services is made, the applicant must be informed that:

- (1) an attorney who provides services for the child support bureau is the attorney for the state and is not providing legal representation to the applicant; and
- (2) communications made by the applicant to the attorney and the advice given by the attorney to the applicant are not confidential communications protected by the privilege provided under IC 34-46-3-1.

(f) A prosecuting attorney or private attorney who contracts or agrees under this section to undertake activities required to be performed under Title IV-D is not required to mediate, resolve, or litigate a dispute between the parties relating to the amount of parenting time or parenting time credit.

(g) An agreement made under subsection (a) must contain requirements stipulating service levels a prosecuting attorney or private entity is expected to meet. The bureau shall disburse:

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1 **(1) incentive money; or**
 2 **(2) federal reimbursement funds;**
 3 **based on whether a prosecuting attorney or private entity meets**
 4 **service levels stipulated in an agreement made under subsection**
 5 **(a).**

6 SECTION 2. IC 12-17-2-18.5, AS AMENDED BY P.L.234-2005,
 7 SECTION 32, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2006]: Sec. 18.5. (a) The bureau shall establish a program to
 9 allow a prosecuting attorney with which the bureau has contracted
 10 under section 18 of this chapter to contract with a collection agency
 11 licensed under IC 25-11 to provide child support enforcement services.

12 (b) The bureau shall:

13 (1) establish a list of approved collection agencies with which a
 14 prosecuting attorney may contract under this section;

15 (2) establish requirements for participation in the program
 16 established under this section to assure:

17 (A) effective administration of the plan; and

18 (B) compliance with all federal and state statutes, regulations,
 19 and rules;

20 (3) update and review the list described in subdivision (1) and
 21 forward a copy of the updated list to each prosecuting attorney
 22 annually; and

23 (4) preapprove or approve all contracts between a collection
 24 agency and a prosecuting attorney.

25 (c) A contract between a prosecuting attorney and a collection
 26 agency under this section must include the following provisions:

27 (1) A provision that records of a contractor operated child support
 28 enforcement system are subject to inspection and copying to the
 29 same extent the records would be subject to inspection and
 30 copying if the contractor were a public agency under IC 5-14-3.

31 (2) A provision that records that are provided by a contractor to
 32 the prosecuting attorney that relate to compliance by the
 33 contractor with the terms of the contract are subject to inspection
 34 and copying in accordance with IC 5-14-3.

35 (d) Not later than July 1, 2006, the bureau shall provide the
 36 legislative council with a report:

37 (1) evaluating the effectiveness of the program established under
 38 this section; and

39 (2) evaluating the impact of arrearage reductions for child support
 40 orders under which collection agencies have collected under
 41 IC 12-17-2-18(c).

42 (e) The bureau is not liable for any costs related to a contract

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entered into under this section that are disallowed for reimbursement by the federal government under the Title IV-D program of the federal Social Security Act.

(f) The bureau shall treat costs incurred by a prosecuting attorney under this section as administrative costs of the prosecuting attorney.

(g) Contracts between a collection agency licensed under IC 25-11 and the bureau or a prosecuting attorney:

(1) must:

(A) be in writing;

(B) include:

(i) all fees, charges, and costs, including administrative and application fees; and

(ii) the right of the bureau or the prosecuting attorney to cancel the contract at any time;

(C) require the collection agency, upon the request of the bureau or the prosecuting attorney, to provide the:

(i) source of each payment received for arrearage on a child support order;

(ii) form of each payment received for arrearage on a child support order;

(iii) amount and percentage that is deducted as a fee or a charge from each payment of arrearage on a child support order; and

(iv) amount of arrearage owed under a child support order; and

(D) be one (1) year renewable contracts; and

(2) may be negotiable contingency contracts in which a collection agency may not collect a fee that exceeds fifteen percent (15%) of the arrearages collected per case.

(h) A collection agency that contracts with the bureau or a prosecuting attorney under this section may, in addition to the collection of arrearages on a child support order, assess and collect from an obligor all fees, charges, costs, and other expenses as provided under the terms of the contract described in subsection (g).

SECTION 3. IC 12-17-2-26, AS AMENDED BY P.L.2-2005, SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 26. (a) **Subject to subsection (d)**, the Title IV-D agency shall provide incentive payments to counties for enforcing and collecting the support rights that have been assigned to the state. The incentive payments shall be made by the Title IV-D agency directly to the county and deposited in the county treasury for distribution on a

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quarterly basis and in ~~equal shares~~ to the following manner:

(1) **Twenty-two and two-tenths percent (22.2%) of the incentive payments shall be distributed to the county general fund.**

(2) **Thirty-three and four-tenths percent (33.4%) of the incentive payments shall be distributed to the operating budget of the prosecuting attorney.**

(3) **Twenty-two and two-tenths percent (22.2%) of the incentive payments shall be distributed to the operating budget of the circuit court clerk.**

(b) Notwithstanding IC 36-2-5-2(b), distribution from the county treasury under subsection (a) shall be made without the necessity of first obtaining an appropriation from the county fiscal body.

(c) The amount that a county receives and the terms under which the incentive payment is paid must be in accordance with relevant federal statutes and the federal regulations promulgated under the statutes. However, amounts received as incentive payments may not, without the approval of the county fiscal body, be used to increase or supplement the salary of an elected official. The amounts received as incentive payments must be used to supplement, rather than take the place of, other funds used for Title IV-D program activities.

(d) The Title IV-D agency shall retain twenty-two and two-tenths percent (22.2%) of the incentive payments described in subsection (a).

SECTION 4. IC 12-17-2-27 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 27. **(a)** Each circuit court clerk shall do the following:

(1) **Before January 1, 2007**, receive ~~the~~ support money assigned to the state and paid under the terms of a court order in the clerk's jurisdiction and pay the money to the Title IV-D agency within the time limits established by P.L.93-647, as amended, and any related regulations that are promulgated.

(2) Maintain all records concerning the payment or nonpayment of support money that have been assigned to the state and transmit the records to the Title IV-D agency upon request.

(3) Contract with the Title IV-D agency for the performance and the remuneration for the performance of duties prescribed in this section.

(b) Beginning January 1, 2007, for purposes of subsection (a)(1), each circuit court clerk may accept only support money that is paid in cash.

SECTION 5. IC 12-17-2-28 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 28. The amounts
 2 appropriated for duties performed by prosecuting attorneys, circuit
 3 court clerks, or other agents under this chapter shall be distributed
 4 directly from the ~~division~~ **department of child services**.

5 SECTION 6. IC 31-14-11-2 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The court
 7 may order either or both parents to pay any reasonable amount for child
 8 support after considering all relevant factors, including the following:

- 9 (1) The financial resources of the custodial parent.
- 10 (2) The standard of living the child would have enjoyed had the
- 11 parents been married and remained married to each other.
- 12 (3) The physical and mental condition of the child.
- 13 (4) The child's educational needs.
- 14 (5) The financial resources and needs of the noncustodial parent.

15 (b) The court shall order a custodial parent or third party under
 16 section 9 of this chapter who receives child support to obtain an
 17 account at a financial institution unless:

- 18 (1) the custodial parent or third party files a written objection
- 19 before a child support order is issued; and
- 20 (2) the court finds that good cause exists to exempt the custodial
- 21 parent or third party from the account requirement.

22 A custodial parent or third party ordered to obtain an account shall
 23 provide the clerk of the circuit court ~~or other person or entity acting as~~
 24 ~~assignee or trustee for remittance and the state central collection unit~~
 25 with an account number and any other information necessary to transfer
 26 funds to the account.

27 (c) In accordance with its policies, a financial institution may
 28 restrict or deny services to a person ordered to obtain an account under
 29 this section.

30 ~~(d) This section may not be construed to require the clerk of the~~
 31 ~~circuit court to remit child support payments by electronic funds~~
 32 ~~transfer.~~

33 SECTION 7. IC 31-14-11-9 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 9. The court may order
 35 that support payments be made to any appropriate person. ~~or agency.~~

36 SECTION 8. IC 31-14-11-11 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 11. **(a) This subsection**
 38 **applies before January 1, 2007.** The court shall require that child
 39 support payments be made through the clerk of the court or the child
 40 support bureau under IC 12-17-2 as trustee for remittance to the person
 41 entitled to receive the payments, unless the court has reasonable
 42 grounds for providing or approving another method of payment.

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(b) Beginning January 1, 2007, the court shall require that child support payments:

- (1) paid in cash be made through the clerk of the court; and
- (2) paid by a noncash method be made through the state central collection unit established by IC 31-33-1.5-8;

as trustee for remittance to the person entitled to receive the payments.

SECTION 9. IC 31-14-11-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 15. (a) A party affected by a support order shall inform the clerk and the state central collection unit established by IC 31-33-1.5-8 of any change of address not more than fifteen (15) days after the party's address is changed.

(b) At the time of the issuance or modification of a support order, the parties affected by the order shall inform the clerk and the state central collection unit established by IC 31-33-1.5-8 of:

~~(1) any change of address and any other conditions that may affect the administration of the order;~~

~~(2) (1) whether any of the parties is receiving or has received assistance under the:~~

(A) federal Aid to Families with Dependent Children program (42 U.S.C. 601 et seq.); or

(B) federal Temporary Assistance to Needy Families (TANF) program (45 CFR 265); and

~~(3) (2) the Social Security number of any child affected by the order.~~

The Social Security number required under subdivision ~~(3)~~ (2) shall be kept confidential and used only to carry out the purposes of the Title IV-D program.

SECTION 10. IC 31-15-7-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 10. Notwithstanding any other law, all orders and awards contained in a dissolution of marriage decree or legal separation decree may be enforced by:

- (1) contempt;
- (2) ~~assignment of wages or other income; an income withholding order;~~ or
- (3) any other remedies available for the enforcement of a court order;

except as otherwise provided by this article.

SECTION 11. IC 31-16-9-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) **This subsection applies before January 1, 2007.** Upon entering an order for support

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in:

- (1) a dissolution of marriage decree under IC 31-15-2;
- (2) a legal separation decree under IC 31-15-3; or
- (3) a child support decree under IC 31-16-2;

the court shall require that support payments be made through the clerk of the circuit court as trustee for remittance to the person entitled to receive payments, unless the court has reasonable grounds for providing or approving another method of payment.

(b) Beginning January 1, 2007, except as provided in subsection (c), upon entering an order for support in:

- (1) a dissolution of marriage decree under IC 31-15-2;**
- (2) a legal separation decree under IC 31-15-3; or**
- (3) a child support decree under IC 31-16-2;**

the court shall require that support payments be made through the clerk of the circuit court or the state central collection unit established by IC 31-33-1.5-8, as trustee for remittance to the person entitled to receive payments, unless the court has reasonable grounds for providing or approving another method of payment.

(c) Beginning January 1, 2007, child support payments that are paid in cash must be paid to a clerk of the circuit court, and all noncash payments must be paid to the state central collection unit established by IC 31-33-1.5-8.

SECTION 12. IC 31-16-9-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. (a) A party affected by a support order shall inform the clerk and the state central collection unit established by IC 31-33-1.5-8 of any change of address not more than fifteen (15) days after the party's address is changed.

(b) At the time of the issuance or modification of a support order, the parties affected by the order shall inform the clerk of the court and the state central collection unit established by IC 31-33-1.5-8 of:

- ~~(1)~~ any change of address or other conditions that may affect the administration of the order;
- ~~(2)~~ (1) whether any of the parties is receiving or has received assistance under the:
 - (A) federal Aid to Families with Dependent Children program (42 U.S.C. 601 et seq.); or**
 - (B) federal Temporary Assistance to Needy Families (TANF) program (45 CFR 265); and**
- ~~(3)~~ (2) the Social Security number of any child affected by the order.

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The Social Security number required under subdivision ~~(3)~~ (2) shall be kept confidential and used only to carry out the purposes of the Title IV-D program.

SECTION 13. IC 31-16-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. The custodial parent and the noncustodial parent shall furnish the following information to the clerk of the court **and the state central collection unit** at the time of the issuance or modification of a child support order:

(1) The parent's Social Security number.

(2) The name and address of the parent's employer.

SECTION 14. IC 31-16-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. (a) If the clerk of the court **or the state central collection unit** is notified by the Title IV-D agency or the agency's designee that:

(1) the child who is the beneficiary of a support order is receiving assistance under the:

(A) federal Aid to Families with Dependent Children program (42 U.S.C. 601 et seq.); **or**

(B) **federal Temporary Assistance to Needy Families (TANF) program (45 CFR 265);** and

(2) an assignment of support rights in favor of the state is in effect against the person obligated to make child support payments; the clerk of the court **or the state central collection unit** shall forward the child support payments directly to the Title IV-D agency without further order of the court.

(b) The Title IV-D agency shall disburse the payments in accordance with federal regulations governing the Title IV-D program.

SECTION 15. IC 31-16-12-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. Notwithstanding any other law, all orders and awards contained in a child support decree or an order directing a person to pay a child support arrearage may be enforced by:

(1) contempt, including the provisions under section 6 of this chapter;

(2) ~~assignment of wages or other income; an income withholding order;~~ **or**

(3) any other remedies available for the enforcement of a court order;

except as otherwise provided by IC 31-16-2 through IC 31-16-11 or this chapter.

SECTION 16. IC 31-16-15-1, AS AMENDED BY P.L.234-2005, SECTION 85, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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UPON PASSAGE]: Sec. 1. (a) In a proceeding under IC 31-14 or IC 31-16-2 through IC 31-16-12 to establish, modify, or enforce a child support order, the court shall:

- (1) enter an order for immediate income withholding; and
- (2) modify any previously issued income withholding order that has not been activated under this chapter to provide for immediate income withholding.

(b) The court shall issue the income withholding order to the income payor not later than fifteen (15) calendar days after the court's determination.

(c) The income withholding order must order income payors to send to the state central collection unit ~~or other person specified in the support order~~ under:

- (1) IC 31-14-11-11;
- ~~(2) IC 31-16-4; or~~
- ~~(3) (2) IC 31-16-9; or~~
- (3) IC 33-37-5-6;**

the amount of income established by the court for child support at the time the order for child support is established, enforced, or modified **and the annual fee required under IC 33-37-5-6.**

(d) However, the court shall issue an income withholding order that will not become activated except upon the occurrence of the two (2) conditions described in section 2 of this chapter if:

- (1) the parties submit a written agreement providing for an alternative child support arrangement; or
- (2) the court determines that good cause exists not to require immediate income withholding.

(e) A finding of good cause under subsection (d)(2) must:

- (1) be written; and
- (2) include:
 - (A) all reasons why immediate income withholding is not in the best interests of the child; and
 - (B) if the case involves a modification of support, a statement that past support has been timely paid.

(f) The income withholding order must contain a statement that if the withholding order is activated, income payors will be ordered to send to the state central collection unit ~~or other person specified in the support order~~ under:

- (1) IC 31-14-11-11;
- ~~(2) IC 31-16-4; or~~
- ~~(3) (2) IC 31-16-9; or~~
- (3) IC 33-37-5-6;**

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the amount of income established by the court for child support **and any support or maintenance fees or payments as required by IC 33-37-5-6.**

SECTION 17. IC 31-16-15-4, AS AMENDED BY P.L.234-2005, SECTION 86, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. (a) This section applies to the implementation of income withholding under an order issued under sections 1 and 3 of this chapter.

(b) If the Title IV-D agency or the court becomes aware that the obligor has an income payor to whom a notice has not been sent under subsection (c) or an income payor to whom notice of delinquent support has not been sent under subsection (c):

- (1) the Title IV-D agency in a case arising under Title IV-D of the federal Social Security Act (42 U.S.C. 651 through 669); or
- (2) the court;

shall not later than fifteen (15) calendar days after becoming aware of an income payor send a written notice to the income payor that the withholding is binding on the income payor.

(c) The notice to an income payor under this section must contain a statement of the following:

- (1) That the income payor is required to withhold a certain amount of income from the obligor.

- (2) That the total amount to be withheld under court order by the obligor's income payor from the obligor's income is the sum of:

- (A) the obligor's current child support obligation;
- (B) an amount to be applied toward the liquidation of any arrearages; and
- (C) an optional fee of two dollars (\$2), which is payable to and imposed at the option of the income payor, each time the income payor forwards income to the state central collection unit; ~~or other person specified in the notice;~~

up to the maximum amount permitted under 15 U.S.C. 1673(b).

- (3) That the income payor shall:

- (A) forward the withheld income described in subdivision (2)(A) and (2)(B) to the state central collection unit ~~or other person named in the notice~~ at the same time that the obligor is paid; and

- (B) include a statement identifying:

- (i) ~~each~~ the cause number **for each payee;**
- (ii) the name of each obligor; ~~and~~
- (iii) the name of each payee with the withheld income forwarded by the income payor;

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- 1 (iv) the Social Security number of each obligor; and
 2 (v) the Indiana support enforcement tracking system
 3 (ISETS) number for each payee.

4 (4) That withholding is binding upon the income payor until
 5 further notice from a Title IV-D agency.

6 (5) That the obligor may recover from the income payor in a civil
 7 action an amount not less than one hundred dollars (\$100) if the
 8 income payor:

9 (A) discharges the obligor from employment;

10 (B) refuses the obligor employment; or

11 (C) disciplines the obligor;

12 solely because the income payor is required to forward income
 13 under this chapter.

14 (6) That the income payor is liable for any amount that the income
 15 payor fails to forward under this chapter.

16 (7) That withholding under this chapter has priority over any
 17 secured or unsecured claim on income except claims for federal,
 18 state, and local taxes.

19 (8) That, if the income payor is required to withhold income from
 20 more than one (1) obligor, the income payor may:

21 (A) combine in a single payment the withheld amounts for all
 22 obligors who have been ordered to pay the state central
 23 collection unit; ~~or other governmental agency~~; and

24 (B) separately identify the part of the single payment that is
 25 attributable to each individual obligor.

26 (9) That if:

27 (A) there is more than one (1) order for withholding against a
 28 single obligor; and

29 (B) the obligor has insufficient disposable earnings to pay the
 30 amount required by all the orders;

31 the income payor shall distribute the withheld earnings pro rata
 32 among the entities entitled to receive earnings under the orders,
 33 giving priority to a current support withholding order. The income
 34 payor shall honor all withholdings to the extent that the total
 35 amount withheld does not exceed the limits imposed under 15
 36 U.S.C. 1673(b).

37 (10) That the income payor shall implement withholding not later
 38 than the first pay date after fourteen (14) days following the date
 39 the notice was received.

40 (11) That the income payor shall:

41 (A) notify:

42 (i) the Title IV-D agency if the Title IV-D agency gives the

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notice under this section; or

(ii) the court if the court gives the notice under this section; when the obligor ceases employment or no longer receives income not later than ten (10) days after the employment or income ceases; and

(B) provide:

(i) the obligor's last known address; and

(ii) the name and address of the obligor's new income payor, if known.

SECTION 18. IC 31-16-15-7, AS AMENDED BY P.L.234-2005, SECTION 87, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. (a) Whenever an income withholding order is to be:

- (1) activated in a case arising under section 5 of this chapter; or
- (2) implemented by a Title IV-D agency under section 3 of this chapter despite the absence of a withholding order in the support order;

the Title IV-D agency shall send a written notice to the obligor.

(b) The notice required under subsection (a) must contain a statement of the following:

- (1) Whether the obligor is delinquent in the payment of child support.
- (2) The amount of child support, if any, that the obligor is in arrears.
- (3) That a certain amount of income is to be:
 - (A) withheld under court order or action by the Title IV-D agency from the obligor's income; and
 - (B) forwarded to the state central collection unit ~~or other person named in the notice:~~ **with a statement identifying:**
 - (i) the cause number for each payee;**
 - (ii) the name of each obligor;**
 - (iii) the name of each payee with the withheld income forwarded by the income payor;**
 - (iv) the Social Security number of each obligor; and**
 - (v) the Indiana support enforcement tracking system (SETS) number for each payee.**

(4) That the total amount to be withheld under court order or action by the Title IV-D agency by the obligor's income payor from the obligor's income is the sum of:

- (A) the obligor's current monthly child support obligation;
- (B) an amount to be applied toward the liquidation of any arrearages; and

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(C) an optional fee of two dollars (\$2), which is payable to and imposed at the option of the income payor, each time the income payor forwards income to the ~~clerk of the court or other person specified in the notice~~ **state central collection unit established by IC 31-33-1.5-8** to the income payor under this chapter;

up to the maximum amount permitted under 15 U.S.C. 1673(b).

(5) That the provision for withholding applies to the receipt of any current or subsequent income.

(6) That the only basis for contesting activation of income withholding is a mistake of fact.

(7) That an obligor may contest the Title IV-D agency's determination to activate income withholding by making written application to the Title IV-D agency not later than twenty (20) days after the date the notice is mailed.

(8) That if the obligor contests the Title IV-D agency's determination to activate the income withholding order, the Title IV-D agency shall schedule an administrative hearing.

(9) That if the obligor does not contest the Title IV-D agency's determination to activate the income withholding order, the Title IV-D agency will activate income withholding.

(10) That income withholding will continue until a court or the Title IV-D agency terminates activation of income withholding.

SECTION 19. IC 31-16-15-8, AS AMENDED BY P.L.234-2005, SECTION 88, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) If a petition to activate an income withholding order is filed under section 6(2) or 6(3) of this chapter, the court shall set a date for a hearing on the petition that is not later than twenty (20) days after the date the petition is filed. The court shall send a summons and a written notice to the obligor. The notice must contain a statement of the following:

(1) Whether the obligor is delinquent in the payment of child support.

(2) The amount of child support, if any, that the obligor is in arrears.

(3) That a certain amount for the payment of current and past due child support is to be withheld each month from the obligor's income and forwarded to the state central collection unit ~~or other person named in the notice~~ **established by IC 31-33-1.5-8**.

(4) That the total amount to be withheld each month by the obligor's income payor from the obligor's income is the sum of:

(A) the obligor's current monthly child support obligation;

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(B) an amount to be applied toward the liquidation of any arrearages; and

(C) an optional fee of two dollars (\$2), which is payable to and imposed at the option of the income payor, each time the income payor forwards income to the state central collection unit ~~or other person named in the notice;~~ **established by IC 31-33-1.5-8;**

up to the maximum amount permitted under 15 U.S.C. 1673(b).

(5) That the provision for withholding applies to receipt of any current or subsequent income.

(6) That any of the following constitutes a basis for contesting the withholding:

(A) A mistake of fact.

(B) The parties have submitted a written agreement providing for an alternative child support arrangement.

(C) A court determines that good cause exists not to require immediate income withholding.

(7) That income withholding will continue until the activation of the income withholding order is terminated by the court.

(8) That if the obligor does not appear at the hearing, the court will activate the income withholding order.

(b) If:

(1) the obligor does not appear at the hearing on the petition filed under section 6(2) or 6(3) of this chapter; or

(2) the court grants the petition;

the court shall activate the income withholding order by mailing a written notice to the income payor as provided in section 10 of this chapter.

SECTION 20. IC 31-16-15-10, AS AMENDED BY P.L.234-2005, SECTION 89, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) To activate or implement an income withholding order, in addition to the notice requirements imposed by sections 7 and 8 of this chapter:

(1) the Title IV-D agency in a case arising under section 3 or 5 of this chapter; or

(2) the court in a case arising under section 6 of this chapter; shall mail a written notice to each income payor not later than fifteen (15) calendar days after the issuance of the income withholding order.

(b) The notice to each income payor must contain a statement of the following:

(1) That the income payor is required to withhold a certain amount of income from the obligor.

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(2) That the total amount to be withheld each month by the obligor's income payor from the obligor's income is the sum of:

(A) the obligor's current monthly child support obligation;

(B) an amount to be applied toward the liquidation of any arrearages; and

(C) an optional fee of two dollars (\$2), which is payable to and imposed at the option of the income payor, each time the income payor forwards income to the state central collection unit; ~~or other person named in the notice;~~

up to the maximum amount permitted under 15 U.S.C. 1673(b).

(3) That the income payor shall:

(A) forward the withheld income described in subdivision (2)(A) and (2)(B) to the state central collection unit ~~or other person named in the notice~~ at the same time that the obligor is paid; and

(B) include a statement identifying:

(i) ~~each~~ **the** cause number **for each payee;**

(ii) the Indiana support enforcement tracking system (SETS) case number **for each payee;**

(iii) the name of each obligor;

(iv) the name of each payee with the withheld income forwarded by the income payor; and

(v) the ~~obligor's~~ Social Security number **of each obligor.**

(4) That withholding is binding upon the income payor until further notice.

(5) That the obligor may recover from the income payor in a civil action an amount not less than one hundred dollars (\$100) if the income payor:

(A) discharges the obligor from employment;

(B) refuses the obligor employment; or

(C) disciplines the obligor;

because the income payor is required to forward income under this chapter.

(6) That the income payor is liable for any amount that the income payor fails to forward under this chapter.

(7) That withholding under this chapter has priority over any secured or unsecured claim on income except claims for federal, state, and local taxes.

(8) That, if the income payor is required to withhold income from more than one (1) obligor, the income payor may:

(A) combine in a single payment the withheld amounts for all obligors who have been ordered to pay the state central

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collection unit; ~~or other governmental agency~~; and

(B) separately identify the part of the single payment that is attributable to each individual obligor.

(9) That if:

(A) there is more than one (1) order for withholding against a single obligor; and

(B) the obligor has insufficient disposable earnings to pay the amount required by all the orders;

the income payor shall distribute the withheld earnings pro rata among the entities entitled to receive earnings under the orders, giving priority to a current support withholding order, and shall honor all withholdings to the extent that the total amount withheld does not exceed the limits imposed under 15 U.S.C. 1673(b).

(10) That the income payor shall implement withholding not later than the first pay date after fourteen (14) days following the date the notice was received.

(11) That the income payor shall:

(A) notify:

(i) the Title IV-D agency in a case arising under section 5 of this chapter; or

(ii) the court in a case arising under section 1 or 6 of this chapter;

when the obligor terminates employment or ceases to receive other income not later than ten (10) days after termination; and

(B) provide:

(i) the obligor's last known address; and

(ii) the name and address of the obligor's new income payor if known.

SECTION 21. IC 31-16-15-15, AS AMENDED BY P.L.234-2005, SECTION 90, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) An income payor that is required to withhold income under this chapter shall:

(1) forward income withheld for the payment of current and past due child support to the state central collection unit ~~or other person named in the notice established by IC 31-33-1.5-8~~ at the same time that the obligor is paid;

(2) include a statement identifying:

(A) ~~each~~ the cause number **for each payee;**

(B) the Indiana support enforcement tracking system (ISETS) case number **for each payee;**

(C) the name of each obligor and the obligor's Social Security number; and

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(D) the name of each payee with the withheld income forwarded by the income payor; and

(3) implement withholding not later than the first pay date after fourteen (14) days following the date the notice was received.

(b) The income payor may retain, in addition to the amount required to be forwarded to the state central collection unit under subsection (a), a fee of two dollars (\$2) from the obligor's income each time the income payor forwards income to the state central collection unit. ~~or other person specified in the notice to an income payor under this chapter.~~ If the income payor elects to withhold the fee, the amount to be withheld for the payment of current and past due child support must be reduced accordingly if necessary to avoid exceeding the maximum amount permitted to be withheld under 15 U.S.C. 1673(b).

SECTION 22. IC 31-16-15-16, AS AMENDED BY P.L.234-2005, SECTION 91, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. (a) Except as provided in subsection (b), if the income payor is required to withhold income from more than one (1) obligor under this chapter, the income payor may:

(1) combine in a single payment the withheld amounts for all obligors who have been ordered to pay to the state central collection unit ~~or other governmental agency; established by IC 31-33-1.5-8;~~ and

(2) separately identify the part of the single payment that is attributable to each individual obligor.

(b) If the income payor:

(1) is required to withhold income from more than one (1) obligor under this chapter; and

(2) employs more than fifty (50) employees;

the income payor shall make payments to the state central collection unit **established by IC 31-33-1.5-8** through electronic funds transfer or through electronic or Internet access made available by the state central collection unit.

(c) The department of child services shall assess a civil penalty of twenty-five dollars (\$25) per obligor per pay period against an income payor that:

(1) is required to make a payment under subsection (b); and

(2) does not make the payment through electronic funds transfer or other means described in subsection (b).

The department shall deposit the penalties into the state general fund.

SECTION 23. IC 31-16-15-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 20. **(a) This subsection applies before January 1, 2007.** The clerk of the court shall:

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(1) pay the income forwarded by the income payor to the person entitled to receive child support payments; and

(2) maintain records to monitor and document the receipt and payment of income under this chapter.

(b) Beginning January 1, 2007, the clerk of the court, for cash payments, and the state central collection unit, for noncash payments, shall:

(1) pay the income forwarded by the income payor to the person entitled to receive child support payments; and

(2) maintain records to monitor and document the receipt and payment of income under this chapter.

SECTION 24. IC 31-16-19-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) If:

(1) an individual, by the terms of a court order or decree, is ordered to pay support money to or for the dependent wife, husband, father, or mother or child of the individual; and

(2) the:

(A) dependents are being supported in whole or in part by public money; or

(B) parent of the dependents has sought the assistance of the agency designated to administer Title IV-D of the federal Social Security Act (42 U.S.C. 651 through 669);

the court shall order that the payment of the support money be made to the clerk of the circuit court of the county in which the decree or order is entered.

(b) If the support order is for a child:

(1) who qualifies for assistance under IC 12-14-1-1; or

(2) whose parent has sought the assistance of the agency designated to administer Title IV-D of the federal Social Security Act (42 U.S.C. 651 through 669);

the court shall order that the payment of the support be made to the agency of state government designated to administer Title IV-D of the federal Social Security Act (42 U.S.C. 651 through 669) in compliance with the federal regulations established for the administration of Title IV-D of the federal Social Security Act (42 U.S.C. 651 through 669).

(c) The order must contain:

(1) the date when the first support payment is to be made; and

(2) the frequency of the payments.

SECTION 25. IC 31-16-19-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. If the court enters a decree or an order under ~~section 1~~ **section 1(a)** of this chapter, the clerk shall:

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(1) immediately set up an appropriate account system in the case;
and

(2) maintain a continuous record of the payments to each account.

SECTION 26. IC 31-16-21-1 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1. (a) Whenever in any
court proceeding an order is in force for

(1) the support and maintenance of the other party to the
proceeding, or

(2) the support and maintenance of a child;

the individual required to pay the support shall pay the support.

(b) The clerk, **if the payment is in cash, or the state central
collection unit, for all other forms of payment**, shall collect from the
individual, in addition to the payments, the fee specified in
IC 33-37-5-6.

(c) The clerk may collect any unpaid fee in a proceeding for
contempt.

**(d) The state central collection unit may collect any unpaid fee
through any lawful means, including income withholding.**

SECTION 27. IC 31-18-1-8 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. "Income withholding
order" means an order or other legal process directed to an obligor's
income payor to withhold:

(1) support; and

**(2) support fees and maintenance fees as described in
IC 33-37-5-6;**

from the income of the obligor.

SECTION 28. IC 31-33-1.5-8, AS ADDED BY P.L.234-2005,
SECTION 95, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
UPON PASSAGE]: Sec. 8. (a) The child support bureau is created
within the department of child services. The bureau is charged with the
administration of Title IV-D of the federal Social Security Act.

(b) The state's plan for the administration of Title IV-D must comply
with all provisions of state law and with the federal statutes and
regulations governing the program.

**(c) The state central collection unit is established within the
child support bureau. The unit shall collect all noncash child
support payments and process child support paid through income
withholding.**

SECTION 29. IC 33-32-4-5 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. The **state central
collection unit is not liable and the clerk is not personally liable or
liable in the clerk's official capacity on the clerk's official bond for**

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funds received if the **state central collection unit or the clerk**:

(1) through error or in accordance with the best information available to the **state central collection unit or the clerk**, disbursed the funds to a person the **state central collection unit or the clerk** reasonably believed to be entitled to receive the funds and to comply with a:

(A) child support order; or

(B) garnishment order;

(2) inappropriately disbursed or misapplied child support funds, arising without the knowledge or approval of the **state central collection unit or the clerk**, that resulted from:

(A) an action by an employee of, or a consultant to, the ~~division of family and children;~~ **department of child services or the Title IV-D agency**;

(B) an ISETS technological error; or

(C) information generated by ISETS;

(3) disbursed funds that the **state central collection unit or the clerk** reasonably believed were available for disbursement but that were not actually available for disbursement;

(4) disbursed child support funds paid to the ~~clerk central collection unit~~ by a personal check that was later dishonored by a financial institution; and

(5) did not commit a criminal offense as a part of the disbursement.

SECTION 30. IC 33-32-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. If the **state central collection unit or the clerk** improperly disburses funds in the manner described by section 5 of this chapter, **the state central collection unit or the clerk** shall do the following:

(1) Deduct the amount of funds improperly disbursed from fees collected under IC 33-37-5-6.

(2) Credit each account from which funds were improperly disbursed with the amount of funds improperly disbursed under section 5 of this chapter.

(3) Notify the prosecuting attorney of the county of:

(A) the amount of the improper disbursement;

(B) the person from whom the amount of the improper disbursement should be collected; and

(C) any other information to assist the prosecuting attorney to collect the amount of the improper disbursement.

(4) Record each action taken under this subsection on a form prescribed by the state board of accounts.

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SECTION 31. IC 33-37-5-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. (a) This section applies to an action in which a final court order requires a person to pay support or maintenance payments through the clerk **or the state central collection unit**.

(b) The clerk **or the state central collection unit** shall collect a fee, in addition to support and maintenance payments. The fee is ~~the~~ following:

(1) Twenty dollars (\$20) for the calendar year in which the initial order is entered, unless the first payment is due after June 30 of that calendar year.

(2) Ten dollars (\$10) for the calendar year in which the initial order was entered, if the first payment is due after June 30 of that calendar year.

(3) In each subsequent year in which the initial order or a modified order is in effect, twenty dollars (\$20) if the fee is paid before February 1, or thirty dollars (\$30) if paid after January 31. **thirty dollars (\$30) for each calendar year.**

(c) The fee required under subsection (b) is due at the time that the first support or maintenance payment for the calendar year in which the fee must be paid is due.

(d) The clerk may not deduct the fee from a support or maintenance payment.

(e) Except as provided under IC 33-32-4-6, IC 33-37-7-1(g), and IC 33-37-7-2(g), the clerk shall forward the fee collected under this section to the county auditor in accordance with IC 33-37-7-12(a).

(f) Income payors required to withhold income under IC 31-16-15 shall pay the annual fee required by subsection (b) through the income withholding procedures described in IC 31-16-15-1.

SECTION 32. IC 34-30-2-144.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 144.3. IC 33-32-4-5 (Concerning child support funds received and disbursed by the state central collection unit or a court clerk).**

SECTION 33. IC 33-32-4-9 IS REPEALED [EFFECTIVE JULY 1, 2006].

SECTION 34. **An emergency is declared for this act.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 153, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 12-17-2-18, AS AMENDED BY P.L.234-2005, SECTION 31, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 18. (a) The bureau shall make the agreements necessary for the effective administration of the plan with local governmental officials within Indiana. The bureau shall contract with:

(1) a prosecuting attorney;

(2) a private attorney **or private entity** if the bureau determines that a reasonable contract cannot be entered into with a prosecuting attorney and the determination is approved by at least two-thirds (2/3) of the Indiana child custody and support advisory committee (established by IC 33-24-11-1); or

(3) a collection agency licensed under IC 25-11 to collect arrearages on child support orders under which collections have not been made on arrearages for at least two (2) years;

in each judicial circuit to undertake activities required to be performed under Title IV-D of the federal Social Security Act (42 U.S.C. 651), including establishment of paternity, establishment, enforcement, and modification of child support orders, activities under the Uniform Reciprocal Enforcement of Support Act (IC 31-2-1, before its repeal) or the Uniform Interstate Family Support Act (IC 31-18, or IC 31-1.5 before its repeal), and if the contract is with a prosecuting attorney, prosecutions of welfare fraud.

(b) The hiring of ~~an~~ a **private attorney or private entity** by an agreement or a contract made under this section is not subject to the approval of the attorney general under IC 4-6-5-3. An agreement or a contract made under this section is not subject to IC 4-13-2-14.3 or IC 5-22.

(c) Subject to section 18.5 of this chapter, a prosecuting attorney with which the bureau contracts under subsection (a):

(1) may contract with a collection agency licensed under IC 25-11 to provide child support enforcement services; and

(2) shall contract with a collection agency licensed under IC 25-11 to collect arrearages on child support orders under which collections have not been made on arrearages for at least two (2) years.

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(d) A prosecuting attorney or private attorney entering into an agreement or a contract with the bureau under this section enters into an attorney-client relationship with the state to represent the interests of the state in the effective administration of the plan and not the interests of any other person. An attorney-client relationship is not created with any other person by reason of an agreement or contract with the bureau.

(e) At the time that an application for child support services is made, the applicant must be informed that:

- (1) an attorney who provides services for the child support bureau is the attorney for the state and is not providing legal representation to the applicant; and
- (2) communications made by the applicant to the attorney and the advice given by the attorney to the applicant are not confidential communications protected by the privilege provided under IC 34-46-3-1.

(f) A prosecuting attorney or private attorney who contracts or agrees under this section to undertake activities required to be performed under Title IV-D is not required to mediate, resolve, or litigate a dispute between the parties relating to the amount of parenting time or parenting time credit.

(g) An agreement made under subsection (a) must contain requirements stipulating service levels a prosecuting attorney or private entity is expected to meet. The bureau shall disburse:

- (1) incentive money; or**
- (2) federal reimbursement funds;**

based on whether a prosecuting attorney or private entity meets service levels stipulated in an agreement made under subsection (a)."

Page 3, between lines 13 and 14, begin a new paragraph and insert:

"SECTION 3. IC 12-17-2-26, AS AMENDED BY P.L.2-2005, SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 26. (a) **Subject to subsection (d)**, the Title IV-D agency shall provide incentive payments to counties for enforcing and collecting the support rights that have been assigned to the state. The incentive payments shall be made by the Title IV-D agency directly to the county and deposited in the county treasury for distribution on a quarterly basis and in ~~equal shares~~ to the following **manner:**

- (1) Twenty-two and two-tenths percent (22.2%) of the incentive payments shall be distributed to the county general fund.**
- (2) Thirty-three and four-tenths percent (33.4%) of the**

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incentive payments shall be distributed to the operating budget of the prosecuting attorney.

(3) Twenty-two and two-tenths percent (22.2%) of the incentive payments shall be distributed to the operating budget of the circuit court clerk.

(b) Notwithstanding IC 36-2-5-2(b), distribution from the county treasury under subsection (a) shall be made without the necessity of first obtaining an appropriation from the county fiscal body.

(c) The amount that a county receives and the terms under which the incentive payment is paid must be in accordance with relevant federal statutes and the federal regulations promulgated under the statutes. However, amounts received as incentive payments may not, without the approval of the county fiscal body, be used to increase or supplement the salary of an elected official. The amounts received as incentive payments must be used to supplement, rather than take the place of, other funds used for Title IV-D program activities.

(d) The Title IV-D agency shall retain twenty-two and two-tenths percent (22.2%) of the incentive payments described in subsection (a)."

Page 18, between lines 5 and 6, begin a new paragraph and insert:

"(d) The state central collection unit may collect any unpaid fee through any lawful means, including income withholding."

Page 20, line 5, delete "twenty-six dollars (\$26)" and insert **"thirty dollars (\$30)"**.

Page 20, line 5, delete "If an".

Page 20, delete lines 6 through 11.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass and be reassigned to the Senate Committee on Appropriations.

(Reference is to SB 153 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 6, Nays 4.

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